

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SANDI WILSON and SYNTHIA LISI,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

VENTURE FINANCIAL GROUP, INC.,  
et al.,

Defendants.

CASE NO. C09-5768BHS

ORDER DENYING THE  
STATE OF WASHINGTON'S  
MOTION TO QUASH  
PLAINTIFFS' SUBPOENAS

This matter comes before the Court on the State of Washington's non-party motion to quash subpoenas and motion for protective order (Dkt. 48). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

**I. FACTUAL AND PROCEDURAL HISTORY**

This matter involves a challenge to the handling of certain retirement accounts managed by Defendants ("VFGI") for the benefit of the Plaintiffs (collectively "Wilson"). For a more complete factual background, *see* Dkt. 44 (order granting in part and denying in part VFGI's motion to dismiss). The issue presented within the instant motion involves a challenge by the State of Washington's (the "State") objections to certain subpoenas issued by Wilson. *See* Dkt. 48.

1 On May 27, 2010, the State moved the court to quash “all outstanding subpoenas  
2 in this action issued to the State and its officers and its employees acting in their official  
3 capacity.” Dkt. 48. On June 2, 2010, Wilson opposed the State’s motion to quash. Dkt.  
4 57. On October 7, 2010, the State replied. Dkt. 76.

## 5 II. DISCUSSION

6 Wilson asserts three alternative bases on to support its motion to quash the  
7 subpoenas at issue: (1) sovereign immunity; (2) Fed R. Civ. P. 45(c)(3); or (3) RCW  
8 30.04.075, Washington State’s relevant bank examination confidentiality statutes. *See*  
9 Dkt. 48.<sup>1</sup> The Court considers these arguments seriatim.

### 10 A. Sovereign Immunity

11 Wilson seeks to enforce the subpoenas it caused to be issued upon the State,  
12 which seek certain bank examination records. *See e.g.* Declaration of Victor M. Minjares  
13 (Minjares Decl.) ¶ 2 (discussing receipt of subpoenas); *see also* Minjares Decl., Exs. A, B  
14 (copies of subpoenas). The State claims sovereign immunity as a means by which to  
15 avoid these discovery subpoenas. Wilson asserts that sovereign immunity does not apply  
16 when the state is a non-party to the action. *See* Dkt. 57 at 6-9.

17 The State cites and relies heavily on *United States v. James*, 980 F.2d 1314 (9th  
18 Cir.1992), a case in which the Ninth Circuit found that the district court had properly  
19 quashed a subpoena issued to a tribe to produce documents on the basis of tribal  
20

---

21  
22 <sup>1</sup>In opposition to the motion to quash, Wilson also contends that the State’s objection to  
23 the subpoenas at issue is untimely under Fed. R. Civ. P. 45(c)(2)(B). Dkt. 57 at 4. However, this  
24 contention is without merit, given that Wilson’s counsel (Genessa Stout) apparently agreed with  
25 the State’s counsel to unconditionally extend the deadline to comply with the subpoenas to May  
26 28, 2010. *See*, Declaration of Joseph Vincent (citing Declaration of Genessa Stout (Dkt. 58-2),  
27 Ex. A at 3-4 (email thread agreeing to the extension); Dkt. 53-3 (copy of second subpoena issued  
28 providing deadline of May 28, 2010)). Wilson has supplied no documentation contrary to the  
State’s claim that the parties agreed to extend the deadline upon which the State was to reply or  
object to the subpoenas. The State filed its objections on May 27, 2010 (Dkt. 48), one day before  
the deadline. Therefore, the Court rejects Wilson’s argument that State’s objection to the  
subpoenas is untimely.

1 (sovereign) immunity. Although the Ninth Circuit upheld the quashal of subpoenas served  
2 upon a non-party in *James*, the case concerned tribal sovereign immunity, not state  
3 sovereign immunity. Indeed, the State does not cite a single published case wherein a  
4 court applied *James* to quash subpoenas issued to a state or state agency, which is the  
5 case here.

6 In contrast, Wilson cites several cases from other Circuits and other district courts  
7 within the Ninth Circuit that have each rejected the argument made by the State. *See* Dkt.  
8 57 at 7-8 (citing *In re Missouri Dept't of Natural Resources*, 105 F.3d 434, 436 (9th Cir.  
9 1977) (“there is simply no authority for the position that the Eleventh Amendment shields  
10 government entities from discovery in a federal court”); *Barnes v. Black*, 544 F.3d 807,  
11 812 (7th Cir. 2008) (Eleventh Amendment not violated by order commanding non-party  
12 state official to produce a document because it “does not compromise state sovereignty to  
13 a significant degree”); *United States v. Juvenile Male I*, 431 F. Supp. 2d 1012, 1016 (D.  
14 Ariz. 2006) (“Federal subpoenas routinely issue to state and federal employees to produce  
15 official records . . . and are fully enforceable despite any claim of immunity”).  
16

17 Furthermore, courts have rejected as irrelevant the State’s argument for applying a  
18 state’s sovereign immunity because “no judgment or other relief of any kind is sought  
19 against” the state, which would invoke Eleventh Amendment protections. *Allen v.*  
20 *Woodford*, 544 F. Supp. 2d 1074, 1079 (E.D. Cal., 2008) (rejecting an Eleventh  
21 Amendment argument to avoid compliance with a third-party subpoena for records held  
22 by a state wherein the state is not a party).

23 Based on the foregoing, the Court concludes that, while *James* may remain good  
24 law within the Ninth Circuit as it pertains to tribal sovereign immunity, it has no force  
25 with respect to the case at bar. Therefore, barring some other exception to compliance, the  
26 State must turn over the requested documents. However, Wilson will work with the State  
27 to reduce the scope of the documents requested to the extent the Court’s prior order on  
28

1 VFGI's motion to dismiss (Dkt. 44) affects the relevant scope of the requested  
2 documents.

3 **B. Rule 45(c)(3)**

4 Alternatively, the State contends that the subpoenas should be quashed under Fed.  
5 R. Civ. P. 45(c)(3). The Court may quash subpoenas that are unreasonable or oppressive.  
6 *Ariel v. Jones*. The State contends that the subpoenas at issue are both unreasonable and  
7 oppressive. Dkt. 48 at 7. In support of this proposition, the State rests its argument on (1)  
8 the economic emergency facing Washington State, (2) that having to review and produce  
9 20,000 pages of potentially relevant material is overly burdensome and onerous on its  
10 face, (3) that producing the documents would violate the State's bank examination  
11 confidentiality statutes, and (4) the subpoenas seek duplicative information already held  
12 by the FDIC. *See id.* at 7-11

13  
14 **1. Economic Emergency**

15 The Court is not persuaded by the State's unsupported "economic emergency"  
16 argument. While there is no doubt the economy has affected the State, it does not mean it  
17 is no longer obligated to abide by the rules governing federal subpoena power. Therefore,  
18 the Court rejects this inadequately supported argument on its face.

19 **2. Overly Broad or Unduly Burdensome**

20 The Court is also not persuaded by the "number of documents" argument. 20,000  
21 pages is insignificant compared to other complex litigation cases involving millions of  
22 documents where courts have rejected application of Rule 45(c)(3). *See, e.g., F.D.I.C. v.*  
23 *Garner*, 126 F.3d 1138, 1146 (9th Cir. 1997) (rejecting the "overbroad or unduly  
24 burdensome" argument in a case involving a demand for more than one million  
25 documents). In *Garner*, the Ninth Circuit held that a party seeking to avoid a subpoena,  
26 such as those issued in this case, requires the party to "enunciate how these subpoenas  
27 constitute a 'fishing expedition.'" As was the case in *Garner*, the State has not articulated  
28

1 how Wilson ’s subpoenas constitute a fishing expedition; therefore this argument is  
2 rejected.

### 3       **3.       Bank Examination Confidentiality Statutes**

4       In its opening motion to quash the subpoenas at issue, the State contended that  
5 Washington State’s Revised Code makes privileged and confidential certain examination  
6 reports. *See, e.g.*, Dkt. 48 at 10 (quoting RCW 30.04.075(1)). In doing so the State argued  
7 that RCW 30.04.075 is binding upon it and that there is an *in-camera* review process that  
8 must be followed regarding the documents requested by Wilson . *See id.* (Citing RCW  
9 30.04.075(6)).

10       Wilson concedes these statutes prevent it from obtaining the examinations,  
11 themselves, but that they are not prevented from obtaining the remainder of the  
12 documents they seek. *See* Dkt. 57 at 12-13. Wilson further contends that the State agrees  
13 that “the proper procedure is for Wilson and the [State] to work out which documents  
14 should be produced, and which documents may necessitate . . .” an *in camera* review  
15 pursuant to RCW 30.04.075(6). Wilson agrees to participate in such a process.

16       In its reply, the State did not address Wilson’s response on this issue. This failure  
17 to reply regarding this issue permits the Court to deem Wilson’s position as meritorious  
18 (*see* Local Rule CR 7(b)(2)); thus, the State has either agreed or abandoned this argument  
19 in support of its motion to quash. Therefore, the Court agrees with Wilson that the  
20 subpoenas are proper to the extent Wilson complies with the applicable laws, including  
21 RCW 30.04.075(6).

### 22       **4.       Duplicative Requests**

23       Finally, the State contends that the documents sought through these subpoenas are  
24 duplicative of those already held by the FDIC and that the subpoenas would be better  
25 directed to that agency. *See* Dkt. 48 at 11. However, this “duplicative” argument was  
26 rejected in *Garner* because the party failed to identify what documents were duplicative.  
27  
28

1 *Garner*, 126 F.3d at 1146. As in *Garner*, the State has also failed to identify the  
2 duplicative documents. Therefore, this argument is rejected.

3 **III. ORDER**

4 Therefore, it is hereby **ORDERED** that

- 5 (1) The State's motion to quash is **DENIED**,  
6 (2) The State **WILL COMPLY** with the subpoenas at issue as discussed  
7 herein.  
8 (3) The State and Wilson **WILL MEET AND CONFER** within 14 days of  
9 this order to determine how and on what basis the documents requested will  
10 be disclosed; such disclosure is to be consistent with the order herein.

11 DATED this 2nd day of November 2010.

12  
13  
14  
15   
16 BENJAMIN H. SETTLE  
United States District Judge  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28